IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.99 OF 2004

Chandbhai Abdul Shaikh .. Appellant

versus

Janabai Narayan Gosawi & others .. Respondents

...

Smt. Anjali N. Helekar for appellant

Mr. U.B. Nighot for respondents

CORAM : D.G. KARNIK, J

DATED :22nd September 2006.

P.C:-

1. Heard learned counsel for the parties.

2. This appeal, at the instance of the original plaintiff, is directed against the judgement and order dated 12th December, 2003 passed by Civil Judge, Senior Division, Pune, dismissing the appellant's

application for injunction in Special Civil Suit No.863 of 2003.

3. The respondent no.s 1 to 7 are the owners of the suit property which is an agricultural land forming part of Gat No.74 situated at village Takali Haji, Taluka Shirur, District Pune. By an agreement of sale dated 29th July,2003 the respondents no. 1 to 7 agreed to sale suit property to the respondent no.8. According to the appellant the appellant is a tenant in possession of the suit property, Fearing that the respondents would forcibly dispossess him, the appellant filed a suit bearing Special Civil Suit No.863 of 2003 against the respondent in the court of Civil Court Judge, Pune, for declaration and injunction. The appellant claimed that since he was tenant the respondents no.1 to 7 were bound to sale the suit property to him under the provisions of Bombay Tenancy and Agricultural Land Act, 1948 (for short, 'B.T.and A.L. Act') and they had no right to sale the property to respondent no.8. He claimed a declaration that the agreement of sale executed by respondents no.1 to 7 in favour of respondent no.8 was null and void and not binding on him and claimed an injunction restraining the respondents no.1 to 7 from executing a sale deed in favour of respondent no.8.

He also claimed an injunction restrainding the respondents from disturbing his possession of the suit property. In the suit appellant also filed an application for interim injunction restraining sale of the suit property and an injunction restraining respondents disturbing his possession. By the judgement and order dated 12th December, 2003, trial court judge dismissed the application. That order is impugned in this appeal.

4. Learned counsel for the appellant invited my attention to a decision of the Tahasildar in Vahivat Case No.38 of 1990 wherein the Tahasildar has held that appellant was in possession of the land since prior to 22nd February, 1979 and ordered that the name of the appellant should be entered in the revenue records to that effect. She submitted that thus there was prima facie evidence that the appellant was in possession of the suit land as a tenant since the year 1979. In the alternative she submitted that in any event there was prima facie evidence that appellant was in possession of the suit land irrespective of the character or the nature of the appellant’s possession. The appellant was therefore entitled to the relief of injunction for protection of his possession.

5. Per contra, the learned counsel for the respondents submitted that appellant is not and was never a tenant of the respondents. In their reply to the injunction application the respondents had specifically denied that the appellant was a tenant and had also denied the possession of the appellant. He submitted that under Section 70(b) of the B.T. and A.L. Act the question whether a person is or was at any time in the past a tenant was required to be decided by the mamlatdar (tahasildar) and civil court had no jurisdiction to decide the question of tenancy. Under Section 85-A of the B.T. and A.L. Act whenever an issue which is required to be decided by the mamlatdar arises in the suit the same is required to be referred to the mamlatdar and civil court cannot decide it. He submitted that since claim of the tenancy of the appellant was disputed, the appellant was required to get his alleged status as a tenant declared or proved before a tahasildar and civil court had no jurisdiction to determine whether the appellant was a tenant. In the absence of such adjudication at the hands of the tahasildar the appellant was not entitled to a relief of an injunction.

6. The first part of the submission of the learned counsel for the respondents that the civil court has

no jurisdiction to decide whether the appellant is a tenant in the suit property or not has to be accepted. Under Section 70 (b) of the B.T. and A.L. Act the jursdiction to decide the question of tenancy vests only with the tahasildar and whenever issue as to the tenancy arises before the civil court, it is required to be referred to the tahasildar under Section 85-A of the B.T. and A.L. Act.

7. In my view, however, if the plaintiff proved his possession of the suit property, irrespective of the character and nature of the possession, he cannot be dispossessed without due process of law. The plaintiff made a claim that he is in possession of the suit property as a tenant. Civil court may not be entitled to determine the question of tenancy. But the civil court can certainly decide whether the plaintiff is in possession of the suit property; if the civil court holds that the plaintiff is in possession of the suit property it would be entitled to grant injunction, pending the decision of the suit, to protect the possession of the plaintiff. I fortified my view by the decision of a Division Bench of this Court rendered in Marybai Marshal Pimenta and another vs. Ramnath Gopal Bhuskute and others, reported in 1987 Mah. L. J. 628. In that case the

plaintiff claimed to be a tenant of the agricultural land, and claimed to be in possession thereof for many years prior to the suit. He moved the civil court for an injunction alleging that the defendant-landlord was trying to disturb his possession. The trial court as well as the appeal court came to the conclusion that the plaintiff therein had proved his possession. However, injunction was refused solely on the ground that in view of the provisions of Section 85-A of the B.T. and A.L. Act the issue whether the plaintiff was a tenant or not, could not be decided by a civil court and would have to be referred to the Tenancy Authorities for their decision. The Division Bench of this Court held that plaintiff was entitlted to an injunction on the well settled position of law that in considering whether an injuction should or should not be granted in favour of a party to protect his possession, all that the Court was required to do was to find out whether the party prima facie established his possession in some capacity or the other. The Court held, as the plaintiff had established that he was in possession of the land, he was entitled to an injunction irrespective of whether his possession was proved to be that of a tenant or not.

8. In the present case the plaintiff has prima facie

proved that he is in possession of the land. In Vahivat Case no.38 of 1990, the tahasildar after consideration of the evidence of the parties and on the basis of spot Panchanama came to the conclusion that the appellant was in possession of the suit property since piror to 22nd February, 1979. Learned counsel for the respondents submits that the decision is not final and the respondents have filed an appeal against that decision. No documents were produced before the trial court nor before this court to show that the appeal has been filed. In any event the decision has not been set aside in appeal and as on today the decision holds the field. The revenue authorities, after the spot inspection, have held that the appellant is in possession of the suit property. No other material has been produced on record by the respondents to show that they are in actual possession of the property. Since the appellant is in possession of the property, appellant is entitled to an injuction for protecting his possession.

9. The appellant however, is not entitled to an injunction restraining the respondents no.1 to 7 from selling the suit property to respondent no.8. The relationship of landlord and tenant is denied by the respondents and as the appellant has not established

that he is tenant of suit land, injuction restraining the respondents no.1 to 7 from selling the property to respondent no.8 cannot be granted at this stage.

10. For these reasons appeal is partly allowed, without any order as to costs.

11. The respondents are restrained from disturbing possession of the appellant of the suit land except by due process of law. the claim for other injunction however, is refused.

(D.G. KARNIK, J.)